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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Assessment and Collection of	)	MD Docket No. 95-3
Regulatory Fees for Fiscal Year 1995	)	

COMMENTS OF THE PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION

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Dated: February 13, 1995

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The Personal Communications Industry Association ("PCIA")[1] hereby submits its comments on the Notice of Proposed Rulemaking in the above-captioned docket.[2]

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[1] PCIA and the National Association of Business and Educational Radio, Inc. ("NABER") recently completed the merger of their two organizations, and now operate under the PCIA name as a new legal entity. This new PCIA is an international trade association created to represent the interests of both the commercial and the private mobile radio service communications industries. PCIA's Federation of Councils includes: the Paging and Narrowband PCS Alliance, the Broadband PCS Alliance, the Specialized Mobile Radio Alliance, the Site Owners and Managers Association, the Association of Wireless System Integrators, the Association of Communications Technicians, and the Private System Users Alliance. In addition, as the FCC-appointed frequency coordinator for the 450-512 MHz bands in the Business Radio Service, the 800 and 900 MHz Business Pools, the 800 MHz General Category frequencies for Business Eligibles and conventional SMR systems, and the 929 MHz paging frequencies, PCIA represents and serves the interests of tens of thousands of licensees.

[2] FCC 95-14 (Jan. 12, 1995) ("*Notice*"). On February 6, 1995, PCIA filed a request for access to records relating to the proposals contained in the *Notice* under the Freedom of Information Act ("FOIA") as well as a request for a brief extension of time in the comment dates in this docket in order to provide time for the Commission to respond to the FOIA request and PCIA to review any records that may be provided. *See* Letter to Andrew S. Fishel, Managing Director, from Mark J. Golden (Feb. 6, 1995) ("FOIA Request); Motion for Extension of Time, MD Docket No. 95-3 (filed Feb. 6, 1995). The request for extension of time was denied, but the FCC indicated that PCIA "may present any additional comments it may have concerning matters in this proceeding by an informal submission to the Commission." Order, MD Docket No. 95-3, DA 95-186 (Feb. 8, 1995).

PCIA believes that the Commission's proposed fee level for Public Mobile Radio licensees is unwarranted, arbitrary, and contrary to Congressional and Commission policies. The Commission's methodology for calculating the fee level for such licensees must be revised to produce a more equitable collection of regulatory funds from the providers of Part 22 paging services.

I. SUMMARY

The *Notice* in this proceeding proposes to raise the level of fees paid by Public Mobile Radio licensees five to ten times. This increase, which imposes a wholly disproportionate burden on Part 22 paging entities, cannot be justified. The *Notice* contains no indication that the proposed fee increase is required in order to account for an increased level of enforcement, policy and rulemaking, international, and user information activities attributable to Part 22 paging licenses.

The proposal to convert the basis for assessing fees from subscribers to units is a substantial factor in the disproportionate increase imposed on Public Mobile Radio operators. The Commission should discard this proposal, and instead retain subscribers as the appropriate basis. Indeed, the Commission's rejection of the basis used by Congress -- subscribers -- and the proposed substitute reliance on units is inconsistent with the statutory provisions. Even if the Commission has such authority, however, the inequitable results of pursuing this proposal warrant its rejection.

Numerous questions exist with respect to the Commission's allocation of costs and its calculation of the new proposed fees. The Commission has not explained how it has allocated cost amounts to specific service categories within each of the Private Radio, Mass Media, Common Carrier, and Cable Television groupings. The *Notice* raises questions whether employees have been inadvertently double-counted in determining regulatory and application processing activities, and leaves uncertainties as to how the Commission has drawn the line between such services. The coincidental number of identical fee amounts for different services also poses questions as to the methodology applied to calculate fees. These issues need to be resolved to ensure that the fees are appropriately determined.

The paging industry is both highly competitive and largely deregulated. As such, its operators obtain limited benefit from the Commission's regulatory activities that are the focus of this rulemaking.[3] Moreover, in no way can the Commission suggest that Public Mobile Radio licensees are now faced with an increase in applicable regulatory activities of five to ten times.

The Commission thus must reject its proposal to collect a disproportionate and inequitable amount of the regulatory cost total from Public Mobile Radio licensees.

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[3] *See* 47 U.S.C. § 159(b)(1)(A).

II. THE PROPOSED ADJUSTMENTS TO THE FEES PAID BY PART 22 PAGING LICENSEES RESULT IN AN UNFAIR ALLOCATION OF THE FEE BURDEN

For fiscal year 1994, Public Mobile Radio licensees were assessed a regulatory fee of $60.00 per 1,000 subscribers, or $0.06 per subscriber.[4] The *Notice* proposes a fee of $0.13 per unit (measured by telephone number or call sign rather than subscriber).[5] The combined effect of the proposed increase to $0.13 and the switch to units instead of subscribers is to increase the regulatory fees collected from Part 22 paging operators by much more than the 93 percent increase called for by Congress.[6] Rather, operators in this highly competitive, largely deregulated service will be forced to pay a regulatory fee that is anywhere from five to ten times more (and possibly greater) than the fees paid in the previous fiscal year.

Part 22 paging licensees thus are being required to shoulder a disproportionate share of the increase in the level of funding to be collected from telecommunications providers and operators. There seems to be no rationale whatsoever for this random dramatic increase in fees for a particular service category. The *Notice* makes no suggestion that enforcement, policy and rulemaking, international, and user information services related to Public Mobile Radio have or will increase in fiscal year 1995 by five to ten times. Considerations of equity and the demands of the public interest

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[4] *See* 47 U.S.C. § 157(g); 47 C.F.R. § 1.1154.

[5] *Notice*, ¶ 44.

[6] *See* Pub. L. No. 103-317, 108 Stat. 1724 at 1737-38 (1994).

require the Commission to revise its proposal for the Public Mobile Radio regulatory fees.

A. Fees Should Be Calculated on the Basis of Subscribers, Not Individual Units

PCIA urges the Commission to retain its current method of calculating fees on the basis of subscribers, rather than shifting to a method by which fees would be calculated on the basis of individual telephone numbers or call signs. Under the regulatory schedule established by Congress in the Omnibus Budget Reconciliation Act of 1993[7] and endorsed by the Commission last year,[8] fee payments from Public Mobile Radio licensees were collected on a subscriber basis. As demonstrated below, the proposed conversion to units as the basis of payment is contrary to the statutory intent, is inconsistent with established policies, and would impose an unfair burden on Part 22 paging providers.

Initially, the Commission's proposal contravenes the legislative framework for assessing fees that was established by Congress. In enacting the 1993 Budget Act, Congress established an initial schedule of regulatory fees.[9] Pursuant to that fee schedule, paging services licensed under Part 22 of the Commission's rules were

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[7] 1993 Budget Act, Pub. L. No. 103-66, Title VI, § 6002(a), 107 Stat. 397.

[8] *See* Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, MD Docket No. 94-19, FCC 94-140, ¶ 12 (June 8, 1994).

[9] 47 U.S.C. § 159(g).

assessed fees based on the number of *subscribers*. In particular, Section 9(g) of the Communications Act provides that paging services must pay an annual fee of sixty dollars "per 1,000 subscribers."[10] Significantly, Congress did not prescribe a subscriber-based fee for all common carrier radio facilities. Indeed, Congress prescribed a per call sign fee for some common carrier services such as domestic and international public fixed facilities.[11] Hence, in enacting the fee schedule, Congress affirmatively determined that a subscriber-based fee was most appropriate for paging and certain other services.

In the *Notice*, the Commission now proposes to adjust the existing fee schedule established by Congress to "require each licensee to submit a fee based upon the total number of telephone numbers or call signs that it provides to customers."[12] In addition to undermining the subscriber-based framework affirmatively established by Congress, the proposed adjustment may in fact exceed the Commission's statutorily-granted authority. Although Section 9 of the Act gives the Commission some authority to adjust the fee schedule, such revisions must be made in accordance with the requirements of subsection (b) of that provision. Specifically, Congress delineated two types of adjustments -- mandatory and permissive -- that the Commission has authority

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[10] *Id.*

[11] *Id.*

[12] *Notice*, ¶ 44.

to make. The adjustments proposed in the *Notice* for Public Mobile Radio licensees, however, are not permitted under either category.

The conversion from subscribers to call signs clearly cannot be deemed to be a mandatory adjustment.[13] Pursuant to Section 9(b)(2), in every year after fiscal year 1994, the Commission must make certain required revisions to the schedule of regulatory fees. The mandatory adjustments are intended to reflect changes in the *amount* of money that Congress appropriates for the performance of the Commission's regulatory activities. Accordingly, the power Congress granted to the Commission to adjust fees under this section is limited to "increas[ing] or decreas[ing] . . . fees;" it does not include the power to revise the basis for calculating particular fees.[14]

Likewise, the Commission's proposed change is not authorized as a permissive adjustment. Section 9(b)(3) of the Act permits the Commission to make certain permissive adjustments to the fee schedule. Specifically, the Commission can:

> add, delete, or reclassify services in the Schedule to reflect additions, deletions, or changes in the nature of its services as a consequence of Commission rulemaking proceedings or changes in law.[15]

Arguably, the proposed conversion from subscriber-based fees to unit-based fees would qualify as a "reclassification" of services. Nonetheless, there have not been any changes in the nature of paging services since Congress enacted the regulatory fee

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[13] *See* 47 U.S.C. § 159(b)(2).

[14] *Id.* Indeed, the Commission indicates that it is acting pursuant to its authority to make *permitted* amendments to the fee schedule. *Notice*, ¶ 44.

[15] 47 U.S.C. § 159(b)(3).

schedule warranting any reclassification. Rather, the fact that a single subscriber might have multiple units was equally true in 1993 as it is now. Accordingly, the Commission does not have the authority to alter the current subscriber-based framework for imposing fees on paging services licensed under Part 22.

In addition to the legal infirmities of the Commission's proposal, the conversion to units instead of subscribers would, as noted above, result in an inequitable regulatory fee increase for Part 22 paging providers. PCIA acknowledges that the amount of money to be raised by regulatory fees for Commission activities has almost doubled over the level from the preceding year, and thus fee increases are unavoidable.[16] The proposed increase in fees for the paging industry, however, is grossly disproportionate to the appropriations increase mandated by Congress. Estimates received from PCIA's members indicate that revamping the method of calculating fees as proposed would result in a regulatory fee payment increase of five to ten times.

The *Notice* fails even to note this effect of its proposal, and certainly contains no justification for such a dramatic increase in Part 22 paging regulatory fees. The proposal, combined with the failure of the *Notice* to acknowledge the substantial financial implications of such action, raise serious questions about the Commission's equitable treatment of licensees and other entities subject to the regulatory fees. If

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[16] The Act specifically authorizes the Commission to adjust fees to reflect "changes in the amount appropriated for the performance of [enforcement activities, policy and rulemaking activities, user information services, and international activities] for such fiscal year." 47 U.S.C. § 159(b)(2).

anything, the limitations on court review of the Commission's actions in this area[17] require the exercise of even greater care to ensure that Commission determinations are in no way arbitrary or inequitable.

B. A Review of the Numbers Associated with the Proposed Regulatory Fees Raise Serious Questions About the Equity and Validity of the Commission's Calculations, Particularly as Applied to Public Mobile Radio Licensees

As noted above, PCIA filed a request under FOIA to obtain records and data essential to a full and fair understanding of the Commission's allocation of regulatory costs and its calculation of appropriate fee amounts for particular services as contemplated by the *Notice*. PCIA concurrently sought a brief extension of time to permit Commission response to the request and analysis by interested parties prior to the submission of opening comments in this docket. PCIA currently does not know what information the Commission will provide in response to its request, but remains hopeful, in light of the Commission's denial of an extension of time in the comment period, that the requested records and/or information will be provided in time to permit analysis in the reply comments in this proceeding. In the absence of the requested information, and based solely on the contents of the *Notice* -- which is less than illuminating regarding many of the determinations made by the Commission in reaching

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[17] *See* 47 U.S.C. § 159(b)(2), (b)(3).

its proposed fee levels -- PCIA must resort to identifying questions and uncertainties about the Commission's allocations and calculations.

First, the Commission has provided virtually no information about the assignment of costs to particular services within the larger category groupings. The *Notice* explains the methodology employed to allocate the regulatory fee amount to each of the four areas of Private Radio, Mass Media, Common Carrier, and Cable Television services. When these gross amounts are further distributed to various services within each of these four areas, however, the Commission's basis for doing so is by no means clear. Has the Commission relied on FTE allocations relevant to the particular services? Has the Commission engaged in calculations based on the level of fee collections during fiscal year 1994, with blanket *pro rata* adjustments bearing no relation to the level of work actually performed (as Appendix G to the *Notice* appears to suggest)?

If the initial cost allocation to each category is not appropriate and is not related to the level of regulatory activities involving that particular service category, then the ultimate fee imposed on payees will be distorted. Given the large amount of fee collection applied to Common Carrier services ($57 million), the incorrect suballocation to particular services can easily result in payee fee levels that are inconsistent with Congressional intent. Because of the Commission's failure to explain its procedures and to ensure a proper allocation of costs to the particular service categories, PCIA necessarily must question the validity of the assigned values.

Second, the *Notice* raises questions as to whether employees have been inadvertently "double-counted" in determining their allocation for regulatory fee purposes, as well as bases used by the Commission for drawing the line between application and policy/rulemaking activities. To the extent that FTEs are improperly allocated to regulatory feeable activities, the Commission's determinations and calculations will be inaccurate. Unfortunately, nothing contained in the *Notice* provides the information necessary to confirm the Commission's analysis.

Third, the coincidental consistency in new fee amounts raised questions about the methodology actually applied by the Commission in calculating the *Notice*'s fee proposals. The *Notice* states that the Commission "divided the revenue requirement for each individual service by its estimated number of payee units."[18] Despite the different cost allocations and different payee volume numbers, PCIA finds it curious that different sets of identical fee amounts were reached for various categories of service. For example, a fee of $7.00 is applied to Private Radio Land Mobile, Private Radio Microwave, and Private Radio IVDS. A fee of $3.00 has been found to be appropriate for all of the remaining Private Radio services. A fee of $0.13 per user or unit is prescribed for Cellular/Public Mobile Radio, VSATs/Mobile Earth Stations, and IXC/LEC/CAPs/Other Providers. These numbers raise serious questions as to whether the Commission in fact *started* with an identification of a preferred fee level in various services, and then worked back to estimate payee volume and applicable cost allocation

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[18] *Notice*, ¶ 12.

for the particular service. Such questions necessarily undercut any argument that the Commission has acted in a fair and equitable manner to update the regulatory fee schedule.

C. Paging, a Largely Deregulated Industry, Is Being Required To Shoulder an Unfair Portion of the Fees Associated with Regulatory Activities

Part 22 paging, as the Commission has recognized, is a highly competitive industry.[19] Participants in this marketplace are numerous, and range from large corporations to small family-owned businesses. The competitive nature of the industry, as well as diversity of the participants, provides the public with a broad range of offerings at very low rates.

Part 22 paging also has been deregulated by the Commission to a large extent.[20] Indeed, the deregulatory efforts of the Commission and the competition found in the paging marketplace have a symbiotic relationship that has lead to real value for the American public.

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[19] *E.g.*, Implementation of Sections 3(n) and 332 of the Communications Act -- Regulatory Treatment of Mobile Services, 9 FCC Rcd 1411, 1467-68 (1994) (Second Report and Order).

[20] *See, e.g.*, Preemption of State Entry Regulation in the Public Land Mobile Service, 59 Rad. Reg. (P&F) 1518 (1986), *remanded on other grounds*, National Ass'n of Reg. Util. Comm'ners v. FCC, No. 86-1205 (D.C. Cir. Mar. 30, 1987), *clarified*, Preemption of Station Entry Regulation in the Public Land Mobile Service, 2 FCC Rcd 6434 (1987).

This competitive, deregulated status means that Part 22 paging payors receive only limited benefit from the Commission's enforcement, policy and rulemaking, international, and user information services, a factor to be considered in the setting of regulatory fees.[21] In no event, however, has the level of regulatory services benefitting Part 22 paging licensees increased commensurate with the increase in regulatory fees to be paid by this service category. Retaining this increase would require Part 22 paging operators to bear an unfair and disproportionate share of funding for Commission activities without any concomitant benefit. The Congressional purposes and notions of equity require the Commission to reject this approach and instead implement revised regulatory fees that reflect a more even-handed, cost-justified formula for the allocation of costs and the calculation of fees.

III. CONCLUSION

The Commission has proposed regulatory fees that grossly overburden Part 22 paging licensees and are wholly inconsistent with the Congressional mandate in establishing the regulatory fee program. The proposals contained in the *Notice* must be revised to ensure that Part 22 paging licensees are not forced to pay for regulatory activities not benefitting them and to ensure equitable treatment. In particular, the Commission should retain subscribers as the basis for determining fee amounts and

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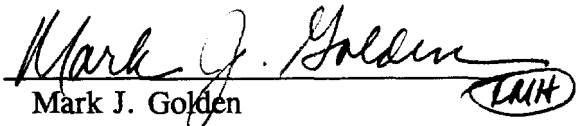
[21] 47 U.S.C. § 159(b)(1)(A).

should ensure that cost allocations to Public Mobile Radio are in fact accurate. Such action will help to ensure that the Commission's fee schedule promotes Commission goals, the Congressional purposes, and the public interest under the Communications Act.

Respectfully submitted,

PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION

By: 

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